

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.23048 of 2006

K.S.Mohan

.. Petitioner

-vs-

1. The Presiding Officer
Central Government Industrial Tribunal
cum Labour Court
I Floor, 'B' Wing
26, Haddows Road
Shastri Bhavan
Chennai 600 006

2. The General Manager
IBP Co.Ltd.,
Cauvery Basin Marketing Terminal
Nagore

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to I.D.No.7 of 2005 from the file of the first respondent Tribunal and quash the impugned award made therein dated 25.01.2006 and to direct the second respondent herein to reinstate the petitioner in service with continuity of service, with backwages and with all other attendant and consequential benefits.

For Petitioner

:: Mr.K.M.Ramesh

For Respondents

:: R1-Court

Mr.V.Karthick for

M/s T.S.Gopalan & Co., for R2

ORDER

This writ petition has been filed by Mr.K.S.Mohan challenging the correctness of the award passed by the Central Government Industrial Tribunal cum Labour Court, Chennai in I.D.No.7 of 2005 dated 25.1.2006, wherein the Industrial Tribunal cum Labour Court has

held against the petitioner that he was not entitled for the relief as claimed in the industrial dispute.

2. Challenging the reasoning and the approach adopted, Mr.K.M.Ramesh, learned counsel for the petitioner, heavily assailing the same, submitted that ignoring the violation of the conditions mentioned under Section 2(oo)(bb) and also again overlooking the provisions mentioned under Section 25-F of the Industrial Disputes Act, the first respondent has erroneously passed the impugned award. When the petitioner was employed in Moorco India Limited, which has technical know-how for erection and commission of terminal automation system to the companies like the second respondent on contract basis, in the year 1993, the said Moorco India Limited got an order from the second respondent for supply, erection, testing, calibration software functional checking and commissioning of terminal automation system including in relation to computer systems software instruments on turnkey basis. In that process, the said Moorco company sent their employees including the petitioner for erection and commission of the terminal automation system by the second respondent at Muttam village. After the work was completed within the prescribed period, the petitioner was assigned with the work of overseeing the functioning of the system as a technician for the warranty period of 12 months. It was also the work of the petitioner to attend to the faults in the functioning of the automation system. As the petitioner was discharging his duties diligently, the officers of the second respondent company, being satisfied with his finest work, asked him to join the services of the second respondent company after the warranty period was over. On the basis of the offer, the petitioner expressed his willingness. This is how the petitioner joined the service of the second respondent company as a technician at the end of October, 1994 with a monthly salary of Rs.2,500/-. Although the petitioner informed the official concerned in the second respondent company that he was drawing a salary of Rs.4,000/- in the said Moorco company, he was informed that he would be paid with Rs.2,500/- initially and the same would be increased in the subsequent year and on completion of two years service, he would be brought into regular time scale of pay. Accepting the words of the officials concerned, the petitioner joined the company and continued to discharge his duties diligently. But, unfortunately, even after three years of continuous service, he was not brought into regular time scale of pay. That apart, he was paid wages only as a retainer. Therefore, the petitioner requested the officials of the second respondent company to make him permanent.

3. In the meanwhile, a group of employees, who were called temporary employees, approached the competent authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act for a direction to be issued to the second respondent company to confirm them in service. When an order was passed in their

favour, the petitioner, after coming to know of the said order, again met the officials concerned and asked them to confirm him also in service, for which the officials of the second respondent duly informed that they were awaiting orders from the central office in respect of those employees who got orders from the competent authority and that as and when they were confirmed in service, his services also would be confirmed. Accepting the words of the officials of the second respondent, the petitioner continued to discharge his duties. While so, all of a sudden, on 31.12.2003, when the petitioner reported for work as usual, the Deputy Manager (Maintenance) of the second respondent company told him that his services were terminated and he was also further informed not to report for duty from 1.1.2014 onwards. When no reason whatsoever was assigned for his non-employment, the petitioner approached the second respondent with a request for reinstatement. There was no response. Therefore, the petitioner raised an industrial dispute regarding his non-employment. It was also further contended that when the efforts of the conciliation officer, Assistant Labour Commissioner, Central Chennai to bring about a settlement during the course of conciliation proceedings did not materialise due to the stiff attitude adopted by the second respondent, the conciliation talks failed, as a result, the Assistant Labour Commissioner sent his report to the Ministry of Labour, which referred the industrial dispute to the first respondent Tribunal for adjudication. But sadly the first respondent miserably failed to take note of the fact that the action of the second respondent company in terminating the petitioner's service is illegal and unjust. When the work of the petitioner was to oversee the functioning of the automation system by attending to the faults and the said work being a permanent and perennial one, the second respondent company was not justified in saying that his work came to an end and he was not a workman of the second respondent company. The first respondent committed yet another mistake in not properly considering the conduct of the second respondent, more particularly, when the second respondent company after asking the petitioner to quit his job in Moorco Company Limited by offering employment, is not justified in terminating his service without giving any notice whatsoever.

4. Continuing his arguments, it was contended that the first respondent ought to have found that the petitioner is a workman as defined under Section 2(s) of the Industrial Disputes Act and ought not to have accepted the case of the second respondent company that he was not a workman and he was only a retainer. When a specific case was laid before the first respondent that there has been a complete violation of the mandatory provisions of Section 25-F of the Industrial Disputes Act, as admittedly not even one month's notice or notice pay and compensation for his past service was given, the first respondent wrongly and erroneously held that the action of the second respondent company in terminating the services of the petitioner without any notice cannot be held to be a violation of the principles of Section 25-F of the Industrial Disputes Act, since he was all

along serving only as retainer. When the second respondent had issued the identity card even on 1.1.96, temporary pass during the period from 1997 till 2000, it goes without saying that the second respondent has accepted the petitioner as its employee. It was also fortified by the petitioner by producing all the relevant and acceptable documents, namely, the communications between the petitioner and the second respondent, more particularly, Ex.W4 written by the petitioner to the Deputy Manager (Maintenance) marked on 6.10.2005 asking the second respondent officials to release the payment. One another Ex.W5 dated 14.5.96, marked on 6.10.2005, issued by the second respondent making a recommendation for approval to be granted for continuing the engagement of instrument technician on retainership basis for maintenance of accuload system for a period of one year against the monthly payment of Rs.3,300/-, which was 10% above the amount that was paid during the previous period, supported by another document Ex.W6 dated 24.6.96, marked on 6.10.2005, seeking the consent of the petitioner for acceptance of the retainership and also Ex.W7 dated 25.11.99, marked on 6.10.2005, are all jointly showing that the petitioner was engaged for providing maintenance support for tank lorry filling system on retainership basis upto 31.12.99 with a consolidated monthly salary of Rs.3,300/-. All these documents produced by the petitioner have been completely misread by the first respondent by simply holding that the petitioner was employed only as a retainer. Therefore, there is no relationship of employee and employer between the petitioner and the second respondent. On completion of retainership, the petitioner cannot be allowed to complain that the second respondent employer has wrongly victimized the petitioner.

5. Adding further, he has also contended that when several other documents from Exs.W8 to W13 were marked with consent before the first respondent, they were not taken into account, as a result, a bad order has been passed by the first respondent, hence, the same is liable to be set aside, he pleaded. In support of his submissions, he has also pressed into service a judgment of the Apex Court in the case of Harjinder Singh v. Punjab State Warehousing Corporation, (2010) 3 SCC 192 for the proposition that the workman is not required to prove that he had worked for a period of 240 days during the 12 calendar months preceding the termination of his service to attract applicability of Section 25-G of the Act, because it is sufficient for him to plead and prove that, while refusing employment, the employer has violated the mandatory provisions adumbrated under Section 2(o)(bb) and Section 25-F of the Industrial Disputes Act. In the present case, when the petitioner has proved his case, the claim has been wrongly rejected. Therefore, the impugned award is liable to be set aside.

6. Mr.V.Karthick, learned counsel for the second respondent, replying to the above contentions, submitted that the reasonings and conclusions given by the first respondent cannot be construed or held as obnoxious, since the impugned award has been passed rightly on the

basis of the documents placed by the petitioner and the second respondent. Right from day one of engagement as retainer in the second respondent, the petitioner has written umpteen number of letters asking them to recognise him only as retainer and also for continuance in the said capacity in the second respondent. At no point of time, the petitioner had written any letter that was placed before the first respondent or before this Court to say that he had asked for either his regularisation or for his continuance as an employee of the second respondent. When all along the petitioner has accepted his engagement as retainer that could be seen and confirmed from Ex.W6 dated 24.6.96, which has been further fortified by another Ex.W8 dated 1.12.2000, wherein he has specifically mentioned that he was willing to provide the maintenance support services on retainership basis for a further period of one year, his request for retainership having been accepted for a further period of one year from 1.1.2001, on completion of retainership, the contract automatically comes to an end. Therefore the petitioner, not being a workman or employee, is not entitled to raise any industrial dispute. It was also his further reply that admittedly there has been an agreement between the petitioner and the second respondent to accept him as retainer in the second respondent company. When that agreement came to an end on 31.12.2003, it cannot be construed that the second respondent has violated the conditions mentioned under Section 2(oo)(bb) of the Industrial Disputes Act. The reason is that when both parties have accepted the said agreement, neither of the party can dispute that after the expiry of the agreement, there has been violation of the same. Adding further, he has stated that when there is no palpable error as indicated in the impugned award, as a general rule, this Court sitting under Article 226 of the Constitution should refuse to interfere with such an award. Therefore, when there is no palpable mistake or error indicated in the impugned award, this Court cannot substitute its own view for interference with the impugned award.

7. I find full merits in the submissions made by Mr.V.Karthick, learned counsel for the second respondent. As mentioned above, Ex.W4 dated Nil marked on 6.10.2005 no doubt clearly shows that the petitioner had asked the second respondent to release the payment of Rs.3,750/-. But another document Ex.W6 dated 24.6.96 clearly shows that the petitioner had accepted his status as a retainer in the second respondent while entering the services of the second respondent for a monthly retainership fee of Rs.3,300/- for the period from 10.5.96 to 9.5.97. One another Ex.W8 dated 1.12.2000 written by the petitioner to the Senior Terminal Manager of the second respondent clearly shows that he was willing to provide maintenance support services on retainership basis for a further period of one year. Therefore, when the petitioner all along has accepted himself as a retainer, he is neither an employee nor a workman, hence, he cannot question the termination when the period of his retainership had come to an end. Hence, this Court finds no infirmity or illegality in the impugned award. Accordingly, the writ

petition fails and it is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ss

To

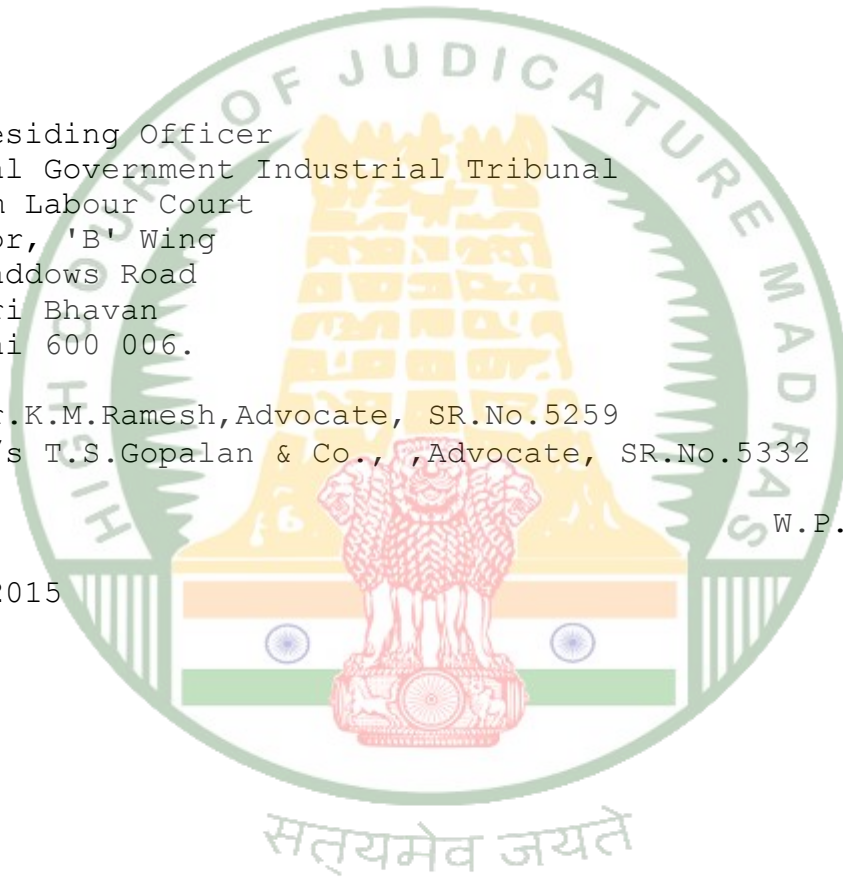
1. The Presiding Officer
Central Government Industrial Tribunal
cum Labour Court
I Floor, 'B' Wing
26, Haddows Road
Shastri Bhavan
Chennai 600 006.

1 cc to Mr.K.M.Ramesh,Advocate, SR.No.5259

1 cc to M/s T.S.Gopalan & Co., ,Advocate, SR.No.5332

W.P.No.23048 of 2006

kgk(co)
pmk.27.3.2015



WEB COPY